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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PROFESSOR JOHN HELMER Plaintiff, - against – U.S. DEPARTMENT OF STATE Defendant.	Civil Action No. 1:19-cv-1744
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COMPLAINT

Plaintiff Professor John Helmer (“**Plaintiff**” or “**Helmer**”) brings this action against the United States Department of State (“**Defendant**” or “**DOS**”), to compel compliance with the Freedom of Information Act (“**FOIA**”), 5 U.S.C. § 552, *et. seq.* challenging the failure of Defendant to respond to Plaintiff’s FOIA request within the statutorily prescribed time period. As grounds therefor, Plaintiff alleges as follows:

THE PARTIES

1. Plaintiff is a U.S. Citizen who owns and maintains a home at 4643 Kenmore Drive, NW, Washington, DC and who is currently residing in South Yarra, Victoria, Australia.
2. Defendant is an agency of the United States Government with headquarters within the District of Columbia.

3. Defendant is in control and possession of the records sought by Plaintiff.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §1331.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(e).

FACTUAL ALLEGATIONS

6. On June 10, 2017, Plaintiff, who is a well-known journalist and author, submitted a FOIA request seeking DOS records, including cables, reports, and memorandums pertaining to **Zelman Cowen**, the 19th Governor-General of Australia who was in office from 1977 to 1982. The Request clearly and narrowly identified documents sought and was limited to a specific period of time from 1972 through 1982. Plaintiff's FOIA Request is attached as **Exhibit A** hereto and is hereby incorporated as if fully set forth herein.

7. By letter dated June 16, 2017, DOS acknowledged receipt of Plaintiff's FOIA request and advised it had assigned Case Control Number F-2017-12701. It did not include a date on which the Defendant would provide an actual response to the request.

8. Since then, Plaintiff was unable to receive any specific information or reason why the production of the responsive records has been delayed or when the documents can be expected to be produced.

9. In response to his inquiries, on September 26, 2018, 15 months after the Request was made, Defendants sent an email stating "We will provide you the information when we receive it." A copy of DOS's September 26, 2018 correspondence is attached hereto as **Exhibit B** and incorporated by reference as if fully set forth herein.

10. On December 3, 2018, the undersigned counsel wrote a letter to Defendant

advising of DOS's failure to comply with its FOIA statutory obligations. A copy of December 3, 2018 correspondence is attached hereto as **Exhibit C** and incorporated by reference as if fully set forth herein.

11. On December 12, 2018, DOS responded that "...FOIA request F-2017-12701 is still in process and has February 2019 estimated date of completion (EDC)..." A copy of December 12, 2018 correspondence is attached hereto as **Exhibit D** and incorporated by reference as if fully set forth herein.

12. Despite further inquiries, Plaintiff did not receive any further communication from Defendant about the FOIA Request.

13. As of the date of this Complaint, Defendant has failed to produce any records responsive to the request or demonstrative that the responsive records are exempt from production.

14. From review of this Court's docket and litigations filed against DOS, it appears that Defendant has a well-known established practice of not properly searching for responsive documents, not providing proper notifications to FOIA requesters, and delaying FOIA responses for exorbitantly long periods with the intention and effect of deterring FOIA requests.

15. Upon information and belief, in numerous instances DOS has no intention of complying with its FOIA obligations unless compelled to do so by a federal court (i.e., unless a requester files a lawsuit).

COUNT I
(Violation of the Freedom of Information Act, 5 U.S.C § 552, *et. seq.*)

16. Plaintiff reasserts, realleges, and incorporates by reference the preceding Paragraphs as though they had been fully set forth herein.

17. The federal FOIA establishes a 20-day deadline by which a federal agency must make and issue a decision regarding compliance with a request for records made pursuant to the

statute. 5 U.S.C. § 552(a)(6)(A)(i).

18. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to determine whether to comply to Plaintiff's request within twenty (20) days, excepting Saturdays, Sundays, and legal public holidays. Pursuant to this same provision, Defendant also was required to notify Plaintiff immediately of the determination, the reasons therefore, and the right to appeal any adverse determination to the head of the agency.

19. Plaintiff sent its FOIA request to Defendant's Office of Information Programs and Services, the component of Defendant designated by Defendant to receive FOIA requests directed to Defendant, and Plaintiff's FOIA request was received on June 10, 2017.

20. Pursuant to 5 U.S.C. § 552(a)(6)(A), the 20-day period commenced on June 11, 2017. Excluding weekends, Defendant was required to make its determination and provide Plaintiff with the requisite notifications by July 1, 2017.

21. As of the date of filing of Plaintiff's initial Complaint, Defendant failed to notify Plaintiff of any determination about whether Defendant will comply with Plaintiff's FOIA request, the reasons for any such determination, Plaintiff's right to seek assistance from Defendant's FOIA public liaison, or Plaintiff's right to appeal any adverse determination to the head of the agency.

22. As of the date of filing of Plaintiff's initial Complaint, Defendant failed to produce any records responsive to Plaintiff's request, indicate when any responsive records will be produced, or demonstrate that responsive records are exempt from production.

23. Defendant requested no information from the Plaintiff that would toll the 20-day period as contemplated by 5 U.S.C. § 552(a)(6)(A)(i)(I).

24. FOIA permits a federal agency, in unusual circumstances, to extend the 20-day response deadline for a period not to exceed ten (10) additional working days. 5 U.S.C. §

552(a)(6)(B).

25. Defendant did not at any time during the applicable 20-day time period, assert the existence of “unusual circumstances.” As such, Defendant has not implicated the tolling provision set forth in 5 U.S.C. § 552(a)(6)(B)(i).

26. There are no “unusual circumstances” that justify Defendant’s prolonged delay in responding to Plaintiff’s lawful FOIA request.

27. Plaintiff has a statutory right to have DOS process its FOIA request in a timely manner and in accordance with the requirements set forth in 5 U.S.C. § 552(a)(6).

28. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

29. FOIA provides a cause of action for a complainant from whom a federal agency has improperly withheld requested records. 5 U.S.C. § 552(a)(4)(B).

30. Through its continued delay in responding to Plaintiff’s lawful request for records, and its improper withholding of such requested records, Defendant has failed to comply with FOIA’s prescribed deadlines for responding to a request for records and has violated Plaintiff’s statutory rights.

31. Pursuant to 5 U.S.C. § 552(a)(6)(C), because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request.

32. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform to the requirements of this law.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendant, and provide Plaintiff with the following relief:

- A. An Order that Defendant shall conduct a diligent search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed reasonable search methods most likely to lead to the discovery of records responsive to Plaintiff's FOIA request, selected from among those methods available to Defendant;
- B. An Order enjoining Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- C. An Order that Defendant produce expeditiously, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records, or portions thereof, withheld under claim of exemption;
- D. A Declaration that Defendant's actions violated Plaintiff's statutory rights under 5 U.S.C. § 552;
- E. An Order awarding to Plaintiff his reasonable attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- F. An Order granting to Plaintiff all further relief as the Court deems just and proper.

Respectfully submitted,

Dated: June 14, 2019

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